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10/533,673	05/03/2005	John Nike	N57.12-0001	9571

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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	**PAPER NUMBER**
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,673	NIKE, JOHN	
	Examiner	Art Unit	
	Cheryl Juska	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *36-57* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed July 11, 2008, has been entered. Claims 36 and 49 have been amended as requested. Claims 1-35 have been cancelled and new claims 54-57 have been added. Thus, the pending claims are 36-57.

Claim Objections

2. Claim 38 stands objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim as set forth in section 4 of the last Office Action (Non-Final Rejection mailed 03/17/08). Applicant traverses the objection by asserting claim 38 further limits the parent claim by limiting the pile of claim 36 to include loops (Amendment, page 6, 5th paragraph). This argument is unpersuasive since claim 36 already recites "a *looped* filament carpet comprising a backing sheet with filaments woven through said backing sheet to provide a pile." In other words, the filament pile of 36 is already limited to a looped filament.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 54 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 54 is written as an independent claim or without dependency upon another claim. As such, the claim lacks antecedent basis for the terms "the base layer" and "the carpet." For the purpose of examination, claim 54 is interpreted as if it is dependent upon claim 36.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 36, 38-43, 47, 49, and 50 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 4,822,658 issued to Pacione.

Applicant has amended independent claims 36 and 49 to limit (a) the carpet pile to "providing a low friction surface simulating a snow surface" and (b) the base layer to "being configured to allow excess fluid to be drained away from the carpet."

With respect to the first limitation, the recited low friction surface is insufficient to distinguish the present invention from the prior art. Specifically, according to the present specification, the low friction surface for simulating a snow surface is achieved by providing pile filaments comprised of polypropylene, nylon, or PVC (page 2, lines 10-13 and page 4, line 3). Since Pacione teaches the pile may be made from nylon filaments, applicant's limitation to a low friction surface simulating a snow surface is met by the teachings of the prior art. Note like materials cannot have mutually exclusive properties.

Regarding the latter limitation, wherein the base layer is configured to allow excess fluid to be drained away, it is reiterated from the last Office Action (page 4, lines 6-8) that the hooked base material of Pacione is capable of providing drainage. Applicant's amendment changing the claim language from "a base layer that provides drainage" to "a base layer…being configured to allow excess fluid to be drained away from the carpet" does not necessarily further limit the structure or composition of said base layer. In other words, the phrase "being configured to…" is analogous to the phrase "adapted to…." Both phrases merely require the ability to perform said function rather than positively limiting the structure or composition of claimed product. As such, the new limitation is insufficient to overcome the standing prior art rejection.

Applicant traverses the rejection of claims 36, 38-43, 47, 49, and 50 by Pacione by asserting that the reference does not disclose an artificial ski slope (Amendment, paragraph spanning pages 6-7 and page 7, 1st paragraph). In response, it is noted that the preamble recitation to "an artificial ski slope surface" is descriptive of the intended use of the claimed product. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As noted above, the carpet of Pacione meets the structural and chemical limitations of applicant's claim. As such, it is believed that the Pacione carpet is capable of performing the intended use of an artificial ski slope surface.

Claim Rejections - 35 USC § 103

8. Claims 46 and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione reference as set forth in section 8 of the last Office Action.

Applicant has not amended the claims or presented new arguments thereto. As such, the claims stand rejected.

9. Claims 44, 45, and 51-53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione '658 reference in view of US 6,298,624 issued to Pacione as set forth in section 9 of the last Office Action.

Applicant has not amended the claims or presented new arguments against said rejection (Amendment, page 7, 4th paragraph). As such, the claims stand rejected.

10. Claims 36-46 and 49-53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson as set forth in section 10 of the last Office Action.

Applicant traverses the rejection over Kuriyama by asserting that the reference does not disclose an artificial ski slope having a looped filament carpet having a pile which provides a low friction surface simulating a snow surface as recited in the claims (Amendment, page 8, 3rd paragraph). In response, it is noted that Kuriyama clearly teaches a carpet material suitable for use as a ski slope (translation, sections [001], [0002], and [0006]). While Kuriyama fails to explicitly teach a looped filament pile, the rejection is not based upon Kuriyama alone. Specifically, the rejection is based upon Kuriyama in view of Larson wherein it would have been obvious to one skilled in the art to substitute loop pile as taught by Larson for the cut pile of Kuriyama.

Applicant also argues that Kuriyama does not describe a base layer configured to allow excess fluids to be drained away (Amendment, page 8, 3rd paragraph). Applicant's recitation to "a base layer…being configured to allow excess fluid to be drained away from the carpet" does not necessarily further limit the structure or composition of said base layer. In other words, the phrase "being configured to…" is analogous to the phrase "adapted to…." Both phrases merely require the ability to perform said function rather than positively limiting the structure or composition of claimed product. As such, the new limitation is insufficient to overcome the standing prior art rejection.

Applicant also traverses the rejection based upon the teachings, or lack thereof, of the Larson reference (Amendment, page 8, 4th paragraph). In response, the rejection is not based upon Larson alone, but rather is an obviousness rejection over Kuriyama in view of Larson. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. Claims 47 and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson as applied to claim 36 above and in further view of US 4,822,658 issued to Pacione as set forth in section 11 of the last Office Action.

Applicant has not amended the claims or presented new arguments thereto. As such, the claims stand rejected.

12. Claims 54 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione '658 reference as applied to claims 36 and 49 above and in further view of Pacione '624.

Claims 54 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson as applied to claims 36 and 49 above and in further view of Pacione '624.

While Pacione '658 and Kuriyama may not explicitly teach a base layer releasably attached to the carpet extending across substantially all of the carpet, the Pacione '624 reference clearly teaches such feature (abstract and Figures 7, 16, and 20). Hence, it would have been readily obvious to modify the Pacione '658 reference or the Kuriyama reference with the features of the Pacione '624 reference since such a modification would have yielded predictable results to one skilled in the art at the time of the invention.

13. Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione '658 reference.

Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson.

Regarding claim 55, while Pacione '658 and Kuriyama and Larson fail to teach pile filament height selected to optimize speed of a skier, the claim is rejected as being obvious since pile height selection is within the level of ordinary skill in the art regardless of the intended use thereof. Hence, claim 55 is rejected as being obvious over the prior art.

With respect to claim 56, the base layers taught by Pacione and Kuriyama are comprised of water permeable materials capable of providing water drainage. as such, claim 56 is also rejected over the prior art.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1794

cj
November 16, 2008